

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 TYRONE BATTLE,

11 Plaintiff,

No. Civ. S-02-0029 JAM EFB P

12 vs.

13 LOUISE PRINTZ, M.D., et al.,

14 Defendants.

ORDER

15 \_\_\_\_\_/  
16 On January 7, 2002, plaintiff commenced this action alleging that defendants violated his  
17 civil rights. *See* 42 U.S.C. § 1983. On May 12, 2008, the remaining defendant in this action  
18 notified the court of plaintiff's death by filing a notice of suggestion of death upon the record.  
19 Defendant also served the suggestion of death on plaintiff's apparent children, Anthony Battle  
20 and Andrea Haygood. After service of a statement noting death, a person who wishes to  
21 substitute for the deceased has 90 days to file a motion to be substituted as the plaintiff. Fed. R.  
22 Civ. P. 25(a)(1).

23 On May 19, 2008, Andrea Haygood filed a letter with this court, requesting that she and  
24 her brother, Anthony Battle, "be replaced as [the] proper part[ies]." The court construes this  
25 letter as a motion for substitution pursuant to Rule 25. Defendant did not file an opposition or  
26 statement of non-opposition to the request.

1 In section 1983 actions, survivors of a deceased individual whose rights were violated  
2 before death may assert these personal claims on the decedent's behalf if state law authorizes a  
3 survival action. 42 U.S.C. § 1988(a); *Moreland v. Las Vegas Metro. Police Dep't*, 159 F.3d 365,  
4 369 (9th Cir. 1998). Under California's survival statute, "a cause of action for or against a  
5 person is not lost by reason of the person's death, but survives . . . ." Cal. Civ. Proc. Code  
6 § 377.20(a). A pending action may be continued by "the decedent's personal representative or,  
7 if none, by the decedent's successor in interest." *Id.* at § 377.31. The California Probate Code  
8 defines "personal representative" as "executor, administrator, administrator with the will  
9 annexed, special administrator, successor personal representative, public administrator acting  
10 pursuant to [Probate Code] Section 7660, or a person who performs substantially the same  
11 function of another jurisdiction governing the person's status." Cal. Prob. Code § 58(a). The  
12 "decedent's successor in interest" is "the beneficiary of the decedent's estate or other successor  
13 in interest who succeeds to a cause of action or to a particular item of property that is the subject  
14 of a cause of action." Cal. Civ. Proc. Code § 377.11. The "successor in interest" may prosecute  
15 the survival action if the person purporting to act as successor in interest satisfies the  
16 requirements of California law. *Id.* at §§ 377.31, 377.32; *Tatum v. City and County of San*  
17 *Francisco*, 441 F.3d 1090, 1094 (9th Cir. 2006).

18 Here, Haygood's motion offers no indication as to whether she and Battle intend to  
19 proceed in a representative capacity as successors in interest or as the personal representatives of  
20 the decedent's estate. Nor is any information provided that would allow the court to conclude  
21 that either she or Battle is the personal representative or successor in interest of the decedent's  
22 estate.

23 ///

24 ///

25 ///

26 ///

1           Accordingly, the court ORDERS Haygood to show cause on or before May 15, 2009,  
2 why the decedent's claims against defendant should not be dismissed because Haygood has not  
3 shown that she is the personal representative or successor in interest of the decedent's estate.  
4 The Clerk is directed to serve a copy of this order on Ms. Haygood at the address provided on  
5 her letter filed May 19, 2008.

6           So Ordered.

7 Dated: March 19, 2009.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE